

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHELLE WILSON

Plaintiff,

-against-

NORTHWESTERN MUTUAL INSURANCE COMPANY,

Defendant.
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Civil Action No. 07 CV 2790
(CLB)

RULE 56.1 STATEMENT

Defendant, The Northwestern Mutual Life Insurance Company ("Northwestern Mutual")
submits this statement of uncontested facts pursuant to Local Rule 56.1:

1. Whole Life Policy No. 16,852,083 was issued to Kenneth Wilson by Northwestern Mutual on May 29, 2004 with a face amount of \$150,000. Affidavit of Cylvia Prince at ¶ 3.
2. Term Life Policy No. 16,852,105 was issued to Kenneth Wilson by Northwestern Mutual on May 29, 2004 with a face amount of \$350,000. Prince Affidavit at ¶ 6.
3. At Mr. Wilson's request, Northwestern Mutual set up ISA Account No. 96-957-01 through which the premiums on the Whole Life Policy and the Term Life Policy (hereafter collectively the "Policies") would be paid on a monthly basis. Mr. Wilson chose to fund the ISA through electronic transfers of funds from his bank account. Prince Affidavit at ¶¶ 9-10.
4. The Policies each contained a "Grace Period" provision allowing a 31-day grace period after the premium's due date before the policy would terminate. In each policy, the Grace Period provision stated that: "If the premium is not paid within

the grace period, the policy will terminate as of the due date.” Prince Affidavit at ¶¶ 5 and 8.

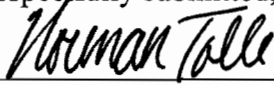
5. On April 12, 2005, both Policies were removed from the ISA, and the ISA was closed because there were insufficient funds in the ISA to pay the Policies’ premiums for March and April 2005. Prince Affidavit at ¶ 21.
6. On April 27, 2005, Mr. Wilson called Northwestern Mutual and asked to have the ISA reopened with only the Term Life Policy to be added and that the premium for that policy be paid through December 28, 2005. He provided his banking information so that a one-time draft against his bank account at JP Morgan Chase could be executed to cover the premiums for the Term Life Policy. Affidavit of Paulette Getschman at ¶ 4.
7. The ISA was reactivated on April 27, 2005, but, as per Mr. Wilson’s instructions, only the Term Life Policy was added to the ISA. Prince Affidavit at ¶ 22.
8. Since the premium for the Whole Life Policy had only been paid through February 28, 2005, and no premium payment was made during the 31-day grace period, the Whole Life Policy terminated effective February 28, 2005 in accordance with its terms. Prince Affidavit at ¶ 22.
9. On May 23, 2005, Mr. Wilson called Northwestern Mutual to find out why he had been notified that there was a shortage in the ISA. Affidavit of Diane Knueppel at ¶ 3.
10. The conversation between Ms. Knueppel and Mr. Wilson was documented in Northwestern Mutual’s Casetracker system. Knueppel Affidavit at ¶ 4.

11. On May 23, 2005, Ms. Knueppel called Mr. Wilson back and informed him that the shortage had resulted because the \$35 policy fee that was waived when he had more than one active policy was charged when the Whole Life Policy terminated. Mr. Wilson then asked that the premiums he had paid for the Term Life Policy be refunded, and that Northwestern Mutual allow that policy to lapse as well. Knueppel Affidavit at ¶ 5.
12. This conversation between Ms. Knueppel and Mr. Wilson was documented in Northwestern Mutual's Casetracker system. Knueppel Affidavit at ¶ 6.
13. On May 24, 2005, Ms. Knueppel called Northwestern Mutual Field Representative Daniel Stein and informed him that Mr. Wilson had requested that the last premium payment on the Term Life Policy be refunded and that the Term Life Policy be allowed to lapse. Knueppel Affidavit at ¶ 7.
14. Ms. Knueppel's conversation with Mr. Stein was documented in Northwestern Mutual's Casetracker system. Knueppel Affidavit at ¶ 7.
15. On May 24, 2005, Ms. Knueppel requested that Mr. Wilson be refunded all premium payments made on the Term Life Policy after February 28, 2005. Knueppel Affidavit at ¶ 10 and Affidavit of Joyce Barrack at ¶ 3.
16. On May 31, 2005, Northwestern Mutual sent Mr. Wilson a check in the amount of \$154.07 representing a refund of the premium payments that had been made for the Term Life Policy for the months of June, July, August, September, October, November and December 2005. Prince Affidavit at ¶ 25
17. On May 27, 2005, Ms. Barrack reversed the premium payments on the Term Life Policy for the months of March, April and May 2005. This action was

documented in Northwestern Mutual's Casetracker system. Barrack Affidavit at ¶5.

18. On May 31, 2005, Northwestern Mutual sent Mr. Wilson a check in the amount of \$81.03 as a refund of the premium payments on the Term Life Policy for the months of March, April and May 2005. Knueppel Affidavit at ¶¶ 11-13.
19. On or about June 6, 2005, Mr. Wilson died. Complaint at ¶ 9.
20. Plaintiff notified Northwestern Mutual of Mr. Wilson's death and demanded payment under the Policies. Complaint at ¶ 13.
21. Northwestern Mutual denied plaintiff's claims for payment under the Policies on the ground that both Policies had terminated as of February 28, 2005. Complaint at ¶ 14.

Dated: January 31, 2008
Uniondale, New York

Respectfully submitted,
By: 
Norman Tolle (NT -5081)
RIVKIN RADLER LLP
Attorneys for Defendant
The Northwestern Mutual Life
Insurance Company
926 RexCorp Plaza
Uniondale, New York 11556-0926
(516) 357-3000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS. :
COUNTY OF NASSAU)

I, Lisa Sullo being sworn, say:

I am not a party to the action, am over 18 years of age and reside in West Babylon, New York.

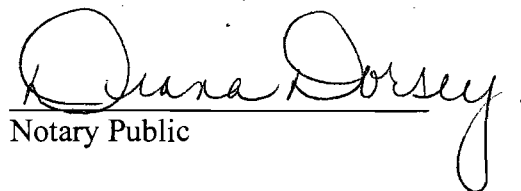
On January 31, 2008, I served the within **Rule 56.1 Rule Statement** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Douglas R. Dollinger & Associates
40 Matthews Street, Suite 101
Village of Goshen
Goshen, New York 10924



Lisa Sullo

Sworn to before me this
31th day of January, 2008



Notary Public

DIANA DORSEY
Notary Public, State of New York
No. 01DO6067959
Qualified in Nassau County
Commission Expires December 24, 20 09